



Notre Dame Law Review

Volume 59 | Issue 2

Article 6

1-1-1984

Book Reviews

Notre Dame Law Review Editors

Follow this and additional works at: <http://scholarship.law.nd.edu/ndlr>



Part of the [Law Commons](#)

Recommended Citation

Notre Dame Law Review Editors, *Book Reviews*, 59 Notre Dame L. Rev. 485 (1984).

Available at: <http://scholarship.law.nd.edu/ndlr/vol59/iss2/6>

This Article is brought to you for free and open access by NDLScholarship. It has been accepted for inclusion in Notre Dame Law Review by an authorized administrator of NDLScholarship. For more information, please contact lawdr@nd.edu.

BOOK REVIEWS

LAW SCHOOL: LEGAL EDUCATION IN AMERICA FROM THE 1850S TO THE 1980S. By *Robert Stevens*. Chapel Hill and London: University of North Carolina Press. 1983. Pp. xvi, 334. \$19.95.

*Reviewed by James W. Ely, Jr. **

Since World War II legal education has experienced a prolonged boom and has achieved high prestige within the university. Yet paradoxically, law schools today are assailed from all directions. Many students find legal education stifling and the faculty remote. Harvard President Derek Bok recently observed that "legal education often seems tedious after the first year," and noted "the striking lack of professional commitment displayed by many [law] students."¹ Judges and practitioners question the level of practical training and stress the acquisition of basic skills. A few states have even experimented with a mandated curriculum, thereby reducing the discretion of faculty and students.² Other units of the university doubt the scholarly nature of legal education.³ Radicals see the law school as a handmaiden for corporate interests.⁴ Law professors worry that job placement has increasingly overshadowed academic activity.⁵ At once envied and distrusted, the law school surely occupies a unique position in American higher education.

Indeed, by the mid-1980's law schools seem to be undergoing a mild identity crisis. Two fundamental concerns lie at the heart of this problem: What is the purpose of legal education? How can these objectives best be accomplished? The effort to resolve these in-

* Professor of Law, Vanderbilt University; A.B., 1959, Princeton University; LL.B., 1962, Harvard University; M.A., 1968, Ph.D., 1971, University of Virginia.

1 Bok, *A Flawed System*, HARVARD MAGAZINE, May-June 1983, at 38, 70.

2 Indiana and South Carolina require students to take certain subjects in law school before being eligible for the bar examination. Boshkoff, *Indiana's Rule 13: The Killy-Loo Bird of the Legal World*, LEARNING AND THE LAW, Summer 1976, at 18; Slonim, *State Court Tells Law School What to Teach*, 67 A.B.A.J. 26 (1981).

3 Bok contended: "[O]ther faculties often look askance at law professors for devoting themselves to pedestrian forms of research, endlessly pecking at legal puzzles within a narrow framework of principles and precedent." Bok, *supra* note 1, at 70.

4 Rockwell, *The Education of the Capitalist Lawyer: The Law School*, in LAW AGAINST THE PEOPLE 90 (R. Lefcourt ed. 1971); Nadar, *Crumbling of the Old Order: Law Schools and Law Firms*, NEW REPUBLIC, Oct. 11, 1969, at 20.

5 Margolick, *The Trouble With America's Law Schools*, N.Y. Times, May 22, 1983, § 6 (Magazine), at 20.

quiries has produced a plethora of committee reports, but definitive answers remain elusive. Thus, there is a notable degree of ambiguity about the mission of the law school in our society.

Although offering no solutions, a retrospective glance at the evolution of modern law schools assists in understanding the current status of legal education. Yet, aside from institutional studies of a few schools,⁶ historians have paid little attention to the development of law schools.⁷ The timely appearance of Robert Stevens' *Law School*⁸ makes an important contribution to our knowledge of this topic. Stevens traces the growth of the law school from its modest origin to the pinnacle of success as gatekeeper for the legal profession. Giving scant treatment to legal education in the colonial period and the Jacksonian era,⁹ Stevens examines institutional training since the 1850's. In a chronological narrative the author probes a variety of issues, duly noting the triumph of the case method and the emergence of Harvard atop a hierarchy of law schools. Three themes dominate Stevens' account, and each warrants detailed consideration.

I. The Drive for Higher Standards

The development of modern law schools was directly tied to the movement to raise standards for entry into the legal profession. Initially a year of formal legal instruction was seen merely as a supplement to traditional law office apprenticeship. Gradually, however, leaders of the bar promoted systematic law school training in preference to often ill-supervised apprenticeships. Reform came slowly. Stevens concludes that by 1895 the American Bar Association (ABA) "had had virtually no impact in raising the educational standards of lawyers" (p. 95). Bar admission requirements remained low, and

6 *E.g.*, A. SUTHERLAND, *THE LAW AT HARVARD: A HISTORY OF IDEAS AND MEN*, 1817-1967 (1967); E. BROWN, *LEGAL EDUCATION AT MICHIGAN, 1859-1959* (1959); F. ELLSWORTH, *LAW ON THE MIDWAY* (1977); P. MOORE, *A CENTURY OF LAW AT NOTRE DAME* (1969). Such studies have been characterized as "tory legal history," preoccupied with institutional protection and professionalism. Konefsky & Schlegel, *Mirror, Mirror on the Wall: Histories of American Law Schools*, 95 HARV. L. REV. 833, 843 (1983).

7 For other accounts of law schools, see J. HURST, *THE GROWTH OF AMERICAN LAW: THE LAW MAKERS* 256-76 (1950); READINGS IN THE HISTORY OF THE AMERICAN LEGAL PROFESSION 216-35 (D. Nolan ed. 1980); W. H. BRYSON, *LEGAL EDUCATION IN VIRGINIA, 1779-1799: A BIOGRAPHICAL APPROACH* (1982).

8 R. STEVENS, *LAW SCHOOL: LEGAL EDUCATION IN AMERICA FROM THE 1850s TO THE 1980s* (1983).

9 See generally McKirdy, *The Lawyer as Apprentice: Legal Education in Eighteenth Century Massachusetts*, 28 J. LEGAL EDUC. 124 (1976); Bloomfield, *David Hoffman and the Shaping of a Republican Legal Culture*, 38 MD. L. REV. 673 (1979).

"the majority of lawyers in the 1890s had seen the inside neither of a college nor of a law school" (p. 95). The norm for institutional education expanded to three years, but until 1920 law was essentially an undergraduate discipline. Students selected either law school or college.

Organization of the Association of American Law Schools (AALS) in 1900 heralded the start of a more successful effort to raise educational standards. The ABA and the AALS joined to open a sustained campaign on two fronts: 1) continually increasing standards required of accredited institutions, and 2) securing legislation which imposed higher requirements on a host of thriving part-time and proprietary schools. Member schools were pressured to curtail night programs, while minimum standards governing library facilities and number of full-time faculty were imposed. Yet many law schools could not meet these requirements, and consequently students before the 1920's flocked to unaccredited proprietary schools. Moreover, until 1928 no state required attendance at a law school before admission to practice.¹⁰

A degree of coercion was necessary to eliminate non-AALS competitors. Leaders of the profession successfully pushed for a more challenging bar examination, designed in part to deny admission to students from proprietary schools. The ABA-AALS also promoted state regulations mandating pre-legal college work. Starting in the 1930's the bar worked to require graduation from an accredited law school as a prerequisite for entry to the profession. As a natural by-product of these tighter requirements, the proprietary and night schools were increasingly driven out of the market.

From the outset this move for higher educational standards was bitterly controversial, with important implications for the practice of law. "The leaders of the bar," Stevens observes, "were conscious that, by calling for a more rigorous training and more systematic bar examinations, entry to the profession would become narrower and, in one respect at least, less democratic" (p. 25). Proprietary schools provided an inexpensive route by which minorities and recent immigrants could hope to become lawyers. Jerold S. Auerbach placed a sinister interpretation upon these developments:

Although lawyers spoke the language of professionalism, their vocabulary often masked hostility toward those who threatened the hegemony of Anglo-Saxon Protestant culture. Professionalism

10 Effective in 1928, West Virginia required two years of college and three years of law school before admission to the bar (pp. 180-81).

and xenophobia were mutually reinforcing. . . . [T]eachers and practitioners began to play variations on the themes of anti-urbanism, anti-Semitism, and nativism.¹¹

Stevens gives a balanced assessment of the various motives behind the attack on proprietary schools. While recognizing the nativist impulse, he rightly emphasizes public interest, economic advantage, and professional status as important factors. Unquestionably, the leaders of the movement for higher standards genuinely favored an educated bar and sought to protect the public from incompetents. Accredited law schools feared the economic competition of large night schools and employed higher standards to bolster their revenue position. Perhaps most important, however, was the emergence in the 19th century of a culture of professionalism. Middle class Americans looked to professional careers, based upon merit, as a major component of their self-identity. "By and large," one historian concluded, "the American university came into existence to serve and promote professional authority in society."¹² The drive for ever higher academic standards and the dominance of AALS schools largely reflected a deep desire to enhance the stature of the legal profession. Academic lawyers in particular directly benefited by this trend. A strikingly similar development occurred in medicine, where medical schools early achieved monopoly control over access to practice.¹³ While other motives were more dramatic, the continued preoccupation with law school standards is best understood as part of a widespread commitment to professionalism.

Robert H. Wiebe has attributed this appearance of professional organizations in the late 19th century to the decline of the traditional sense of community in the face of urbanization. Professional groups and business associations abounded in the period 1880-1920, hastened by the emergence of modern graduate schools. Professionalism helped to reestablish a degree of order at a time of rapid change in American society.¹⁴ Thus, the experience of legal education was not unique. Numerous occupations sought to protect their position by creating formal educational and entry requirements.

11 J. AUERBACH, *UNEQUAL JUSTICE: LAWYERS AND SOCIAL CHANGE IN MODERN AMERICA* 99 (1976).

12 B. BLEDSTEIN, *THE CULTURE OF PROFESSIONALISM: THE MIDDLE CLASS AND THE DEVELOPMENT OF HIGHER EDUCATION IN AMERICA* x (1976).

13 *Id.* at 191-93, 297.

14 R. WIEBE, *THE SEARCH FOR ORDER, 1877-1920* (1967).

II. A Divided Heritage

A degree of schizophrenia pervades modern legal education. By the 1950's, the ABA-AALS had swept nearly all before it. Proprietary schools were nearly extinct, and legal education had achieved elevated status within universities. Law school admissions selectivity markedly increased, aided by the appearance of the LSAT in 1948. Legal education even weathered the turbulence of the late 1960's with few structural changes. Despite this impressive record of accomplishment, however, all is not well in the law school community. The persistent tension between practitioners and academics, which always hovered in the wings, has forcefully reemerged. This has been highlighted by Chief Justice Warren Burger's repeated criticism of the quality of trial lawyers.¹⁵ Many leaders of the bar are unhappy with the law schools which, ironically, they had done so much to shape over the years. This reflects differing assumptions about the role of legal education in society. "Legal education's heritage," Stevens observes, "was one of an inherent conflict between the professional and the scholarly" (p. 266).

This dichotomy was symbolized by the founding of the AALS to represent the separate interests of legal educators. Proud of their hard won academic reputations, many faculty members resented any suggestion that law schools should teach trade subjects. Moreover, law professors were naturally reluctant to allow any outsider to control their curriculum. Such a step would undermine the autonomy and intellectual independence of law schools. In fact, elite law schools with strong traditions of scholarship have been the most outspoken in resisting a practice-oriented scheme of instruction. The sharp faculty debate during the 1970's over the place of clinical education also demonstrated a reluctance to deviate from established methods and curriculum. Clinics, after all, smacked of practical education and even harkened back to the days of office apprenticeship. They also competed with formal instruction for students and financial resources. Thus, it is not surprising that clinics proved controversial.

Yet, for all the claims of academic standing, one could ask whether the law school has any real function apart from professional preparation. If not, are legal educators guilty of believing their own propaganda about law as an intellectual discipline? In 1918, Thorstein Veblen asserted that "the law school belongs in the modern uni-

15 N.Y. Times, Nov. 27, 1973, at 1, col. 3; Burger, *Some Further Reflections on the Problem of Adequacy of Trial Counsel*, 49 FORDHAM L. REV. 1 (1980).

versity no more than a school of fencing or dancing.”¹⁶ Viewing law schools as vocational in character, he further contended that law teachers “stand in a relation to their students analogous to that in which the ‘coaches’ stand to the athletes.”¹⁷ Without adopting this position, Stevens emphasizes the practical character of legal education. “Despite all the rhetoric,” he concludes, “the American law school was founded and developed as a professional school stressing the knowledge needed to pass the bar examination and to succeed in practice” (p. 266). Indeed, few institutions can afford to ignore the career-oriented dimensions of their mission. For example, Hastings College of Law faced a crisis in 1950 when 47 students failed the California bar exam.¹⁸ This incident underscored the vocational component inherent in formal legal education.

The friction between the scholarly and practical strains of legal education has important implications for our understanding of modern law schools. For many years there was an intense fight over whether faculty should be full-time academics or part-time practitioners. On one level, of course, the scholarly approach was triumphant, and law schools today are firmly in the hands of academics. Stevens asserts that by the early twentieth century “the leading academics strengthened their position of intellectual leadership in the legal life of the country” (p. 133). Nonetheless, overtones of the old conflict remain. Should new faculty be selected solely upon scholastic record? Or is successful practice experience valuable in becoming a law teacher? To what extent should professors be permitted to practice law? Should bar associations be able to dictate the curriculum in order to stress practical skills? Or should law faculty teach essentially theoretical subjects, relying on law firms to provide further training to young attorneys? No easy or categorical answers are apparent.

This schizophrenia is strikingly evident in the field of scholarship. “Legal scholarship,” Stevens declares, “was yet another area whose purpose had been confused by the demands placed on the law schools as they both assumed their role as the sole point of entry for practice in the profession and also claimed legitimacy in the scholarly confines of the university” (p. 270). If the primary goal of law schools is professional preparation, why should the faculty be expected to contribute scholarly literature? Few students really care

16 T. VELEN, *THE HIGHER LEARNING IN AMERICA* 211 (1918).

17 *Id.*

18 T. BARNES, *HASTINGS COLLEGE OF LAW: THE FIRST CENTURY* 302-18 (1978).

what their professors have written. In fact, a law faculty typically produces less scholarship than its counterparts in the liberal arts disciplines. At many schools teaching remains the most important skill, and reputations are based on classroom performance.¹⁹ This explains why so many legal scholars develop casebooks, thus blending intellectual pursuits with teaching.

Still other questions perplex the legal academic. What is the function of legal scholarship? Is it intended for practitioners or other professors? In a recent article Stevens notes:

In general, the leading academics have failed to provide the profession's scholarship. . . . Indeed, to have written the standard practitioner's work in a substantive field of law might well be the kiss of death for one who wants to be employed in one of our leading law schools. . . . [T]his confusion—and I think schizophrenia is the right word—has had a paralyzing effect. I suspect that the reason there is little good legal scholarship—and all too often little scholarship—is that the typical teacher in a typical law school knows that it is not quite socially acceptable to write a “professional” article and yet is not quite comfortable writing the “academic” one.²⁰

Other commentators are more direct. Alfred S. Konefsky and John Henry Schlegel have bluntly declared that “legal scholarship is in many ways a bad joke.”²¹ The uncertain goal of legal scholarship has yielded two classes of literature. Law reviews are filled with technical articles which closely analyze appellate decisions. At the same time we find grandiose reflections about political philosophy, legal history, and social order, topics with scant interest for practitioners. The audience for this latter category is really other professors, or perhaps the occasional judge. One may wonder how long this split between the interests of many academics and the needs of the profession can continue.

Moreover, there are conspicuous gaps in existing legal literature. Empirical research is almost entirely lacking. Do statutes or judicial rulings actually have an impact on how people behave? To what extent are court decisions implemented? Do laws produce unanticipated results? There is surprisingly little knowledge about such fun-

19 For an earlier treatment of the diverse pressures on law faculty, see Bergin, *The Law Teacher: A Man Divided Against Himself*, 54 VA. L. REV. 637 (1968).

20 Stevens, *American Legal Scholarship: Structural Constraints and Intellectual Conceptualism*, 33 J. LEGAL EDUC. 442, 445-46 (1983).

21 Konefsky & Schlegel, *supra* note 6, at 848-49.

damental issues.²² Bok declared that "legal scholars are rarely trained in the methods of empirical investigation and hence do not devote themselves to exploring the actual effects of legal rules on human behavior."²³ But, he warned, this neglect may lead "lawmakers and regulators . . . to have inflated and unrealistic notions of their capacity to use legal rules to influence behavior."²⁴

III. A State of Equilibrium

Despite ever higher standards, Stevens pictures the modern law school as intellectually stagnant. Rhetoric about curriculum reform only masks the reality that few fundamental changes have been implemented in decades.²⁵ "To record the development of curricula in the post-1945 era," Stevens declares, "is thus, in so many ways, disheartening" (p. 210). In truth, the much heralded introduction of seminars and clinical experiments was merely peripheral. The core courses and the casebook method remain untouched. The widespread elimination of required courses, however, has compounded the problem by producing an unfortunate fragmentation of legal study. "The underlying purpose of courses," Stevens asserts, "still often remained obscure and the sequential order of courses a mystery" (p. 277). He even downplays the Realistic movement, suggesting that its impact was restricted to a handful of elite schools (pp. 156-57).

Several factors contribute to this state of equilibrium. The vocational focus of students and the financial constraints of contemporary university life give no impetus for major reform. The principal culprit, though, is the law faculty.

Why are law professors so antagonistic to curriculum reform? First, there is a strong emotional tie to the status quo. Professors are usually persons who excelled as students in handling the existing subjects. They naturally see no reason to alter the prevailing curriculum. Second, teachers share a self-interest in present instructional patterns. Any substantial change is threatening. Reform might render some courses obsolete or redundant, and the prospect of reassignment intimidates professors. The perceived need to specialize—in part to achieve scholarly goals—has deprived many law teachers

22 For a rare analysis of the impact of judicial decisions, see D. HOROWITZ, *THE COURTS AND SOCIAL POLICY* (1977).

23 Bok, *supra* note 1, at 43.

24 *Id.*

25 E. GEE & D. JACKSON, *FOLLOWING THE LEADER? THE UNEXAMINED CONSENSUS IN LAW SCHOOL CURRICULA* (1975).

of readily transferable knowledge. Then, too, some professors are lazy, and others wish to concentrate on research rather than preparation of new courses. Prestige among colleagues is also important, rendering reform of the first year curriculum particularly difficult. Unlike the situation in other fields of study, law students usually work hardest during their initial year. Thus, great pride of place attaches to teaching first year courses, and any proposal to change the existing line-up faces certain opposition.

This reviewer submits, however, that there is a still more fundamental reason for the lack of innovation in legal education—the deadening influence of the law school pecking order. Many faculty are obsessed with the ranking game,²⁶ and hope above all else to draw the attention of an elite school. “We also know,” two scholars contend, “that just about every law school became a little Harvard, if only in its mind’s eye.”²⁷ In such a climate teachers are reluctant to deviate from the educational pattern of the most prominent schools. Any change in the law school world tends to originate at the top.

The 1980’s do not hold much prospect for innovation. Deans typically lack the authority to restructure the work load of tenured faculty, and curriculum committees do little more than process applications for new courses. Yet the proliferation of speciality courses only adds to the incoherent jumble. Without external pressures—from the bar²⁸ or the university administration—significant change in the program of American law schools is virtually impossible.

The sameness of curricular offerings is matched by the composition of faculties. In 1967 Harvard Dean Erwin Griswold observed: “Our faculties tend to reproduce themselves; and in the process may by the continual inbreeding that is involved be producing even narrower law students than they were themselves.”²⁹ The results of this cloning process are striking. A recent study demonstrated that almost 60 percent of full-time law teachers graduated from only 20 institutions. One third of law professors were educated at five

26 At the 1983 annual meeting of the AALS Stevens chided law teachers: “You waste time worrying about exactly where your law school is on the law-school pecking charts.” Stevens, *supra* note 20, at 447.

27 Konefsky & Schlegel, *supra* note 6, at 848.

28 In the mid-1970’s the ABA tightened its accreditation standards which require law schools to offer instruction in professional responsibility. AMERICAN BAR ASSOCIATION, APPROVAL OF LAW SCHOOLS: AMERICAN BAR ASSOCIATION STANDARDS OF RULES AND PROCEDURES Standard 302 (1977). See generally O’Connor, *Professional Competence and Social Responsibility: Fulfilling the Vanderbilt Vision*, 36 VAND. L. REV. 1 (1983).

29 Sawyer, *Dean Griswold Attacks Faculty Inbreeding*, Harv. L. Rec., Oct. 5, 1967, at 3.

schools.³⁰ Inbreeding is most prevalent among elite institutions, some of which hire predominately their own graduates. Although educators praise faculty diversity in the abstract, uniformity has been the governing rule in faculty selection.³¹ The net effect is to underscore the dominance of elite feeder schools in the methodology and content of legal education.

Conclusion

Stevens has amassed a wealth of information about law schools. His assessment of educational trends is judicious and provocative. The author squarely challenges the inflated self-image held by many legal educators. Nonetheless, the value of *Law School* is limited in several respects. Substantial portions of the volume were published more than a decade ago, and show little sign of revision.³² Stevens depends heavily upon secondary works and official reports. Innovative techniques, such as oral history, are notably lacking. Yet systematic interviews would have been extremely helpful for the post-World War II era.

In addition, the coverage of developments is skewed in important ways. Although Stevens makes a determined effort to treat the history of state and proprietary schools, there is heavy emphasis upon the charmed circle of elite institutions. Given the predominant influence of certain schools this may have been inevitable. Still, it is necessary to remember that the vast majority of law students are prepared in non-elite schools. There is also a sectional bias. Stevens gives relatively little attention to the development of legal education in the South outside Virginia.³³

Despite his impressive background in English history,³⁴ Stevens misses the opportunity to analyze legal education in comparative terms. In Great Britain the study of law remains an undergraduate pursuit, as had been the case in the United States before 1920. Students must complete a three-year program of legal studies at a uni-

30 Fossum, *Law Professors: A Profile of the Teaching Branch of the Legal Profession*, 1980 AM. B. FOUND. RESEARCH J. 501, 507.

31 There has been only limited attention given to the law faculty selection process. See Bruce & Swygert, *The Law Faculty Hiring Process*, 18 HOUS. L. REV. 215 (1981); Zenoff & Barron, *So You Want to Hire a Law Professor*, 33 J. LEGAL EDUC. 492 (1983).

32 Stevens, *Two Cheers for 1870: The American Law School*, in 5 PERSPECTIVES ON AMERICAN HISTORY 405 (D. Fleming and B. Bailyn eds. 1971).

33 The legal history of the South has generally been ignored. Ely & Calvani, *Foreward: Symposium on the Legal History of the South*, 32 VAND. L. REV. 1 (1979).

34 R. STEVENS, *LAW AND POLITICS: THE HOUSE OF LORDS AS A JUDICIAL BODY, 1800-1976* (1978).

versity or polytechnic school. Both prospective solicitors and barristers are then required to take a further one year course offered by professional societies. The British have retained a form of the apprenticeship system. After passing the necessary entrance examinations, prospective barristers must work a year as the pupil of a practicing barrister. Aspiring solicitors must serve articles of apprenticeship for two years with a solicitor or a law firm.³⁵ Does the English scheme, combining both an academic and a practical component, offer advantages which we would do well to consider?

A word about the volume's style seems in order. *Law School* is written in the manner of a law review article, with much of the most interesting material buried in footnotes. This problem is compounded by the unfortunate decision of the publisher to place the footnotes after each chapter rather than on the relevant pages.

These caveats should not detract from Stevens' achievement. *Law School* is a solid and instructive study, which should be of interest to both lawyers and academics. Whether the current law school malaise is merely a tempest in a teapot or a portent of more serious troubles, only time will tell. But Stevens reminds us that American legal education only assumed its modern form, after great conflict, in relatively recent times. As it enters a steady state the comfortable law school world may face some unpleasant moments in the 1980's.³⁶ Such was the experience of our intellectual forebears.

35 REPORT OF THE COMMITTEE ON LEGAL EDUCATION (presented to Parliament by the Lord High Chancellor) (1971); B. HOGAN, A CAREER IN LAW (1981); James, *English Legal Education and Practice*, 27 N.Y.L. SCH. L. REV. 881 (1982).

36 Stevens concludes his book by warning that "some law schools could expect a rough passage through the 1980s" (p. 276). More recently, he has predicted that law schools "can look forward to a narrower and less important role in the future training of members of the bar." Stevens, *supra* note 20, at 445.

THE NEXT AMERICAN FRONTIER. By *Robert B. Reich*. New York: Times Book Company. 1983. Pp. 324. \$16.60.

*Reviewed by M. Neil Browne**

Several generations of American children have been taught that our economic and political system is the best because it has resulted in the greatest accumulation of material wealth. While this criterion for measuring superiority has certain obvious flaws, the ability of the American business and governmental system to generate impressive economic growth rates has been, until very recently, unquestioned. Now, however, a sharp change has occurred. The Japanese and most Western European economies have recently been growing much more rapidly than the faltering United States gross national product per capita. Several of these economies are now richer than our own in terms of per capita income (p. 16). If the creation of wealth is an important measure of societal performance, we are in trouble.

Robert Reich's *The Next American Frontier*¹ diagnoses our current ailment and suggests the direction which political remedies should take. The bulk of the analysis is a historical account of the origins of the managerial philosophy that Reich blames for our economic predicament. An organizational format that historically provided the basis for our economic strength now threatens, according to Reich, to hasten our relative decline as a wealthy nation. Managerial techniques aimed at high volume, simplified jobs, and the maximization of individual output are all seen by Reich as anachronistic organizational objectives. Their continued use, not excessive regulation, high taxes, or federal deficits, is the source of economic stagnation in America (pp. 117-20). The initial section of this review will summarize Reich's contribution to the contemporary debate surrounding our economic future. The final section provides an assessment of Reich's reasoning.

I.

The Next American Frontier is divided into four parts. The introductory section provides a description of our present economic situa-

* Professor of Economics, Bowling Green State University. B.A., 1965, University of Houston; Ph.D., 1969, University of Texas; J.D., 1981, University of Toledo.

1 R. REICH, *THE NEXT AMERICAN FRONTIER* (1983).

tion, a comparison of our economy's performance with that of other industrialized nations, and a brief synopsis of Reich's thesis that faulty organization is responsible for declining American productivity. Parts two and three present a history of management as a profession in the United States. According to Reich, the development of this profession along particular lines that were appropriate for mass production enterprises had become, by 1970, a burden that has limited our ability to respond to new challenges by stronger international competitors. The final part of *The Next American Frontier* is the briefest and most interesting. The book concludes with a discussion of specific political and economic policies that Reich contends would bring America into the modern industrial world presently dominated by concerns about the quality, rather than quantity, of industrial output.

A busy reader could acquire an accurate understanding of Reich's entire analysis by perusing Part I of *The Next American Frontier*. Reich argues that Americans have discussed public policy utilizing a false dichotomy between government and business. In the modern era, successful countries will be those who emphasize teamwork and collaborative consensus in both politics and markets. Since the success of governments depends on the productivity of market activities and since business behavior is increasingly shaped by governmental policy, businesses and governments are partners, not opponents (pp. 3-6). Reich returns to this theme repeatedly in the book. He blames those who hold to the dream of an unfettered market for reducing the capacity of our workforce to work for common ends (p. 279). Yet his policy proposals all rely on the business community as the implementation arm of a modern industrialization policy.

"Consensus," "shared ends," and "cooperation" are important concepts for understanding Reich's thought. Government, business, labor and consumers are urged to unify their efforts instead of struggling to dominate one another. While Reich is very vague about the goals which Americans should agree to cooperate in attaining, one goal is evidently economic growth, since Reich's description of our current inadequacies focuses on the slow pace of recent American growth rates.

The bulk of Reich's book is historical. He argues that we cannot revise our organizational structures (Reich's term for the rules and objectives that guide a society's dominant organizations) unless we understand that their evolution should be functional. Mass produc-

tion leading to reduced unit cost is the fundamental organizational structure that has guided both major American firms and governmental macroeconomic policy. High-volume production was a distinctly American contribution to organizational philosophy (pp. 22-23). However, the large-scale systems of factories with simplified work tasks that brought so much industrial success to the United States from 1920 to 1970 are now foundering.

Part II of *The Next American Frontier* explains the role that management as an intellectual discipline played in directing the formation of large governmental agencies and business conglomerates. Specialization of work through simplification of individual tasks, predetermined rules to coordinate the tasks, and detailed monitoring of performance were the guiding principles of American scientific management (pp. 64-69). Especially significant in Reich's analysis is the mobilization by the American government in World War II. During this period, the legislative and executive branches of government combined with business in the pursuit of efficient high-volume production. Ever since that cooperative era, business and government have, according to Reich, embraced this objective and the hierarchical managerial principles it is presumed to require (pp. 92-101).

The largest section of the book is Part III, which pinpoints the international changes that caused our post-1970 economic problems and then extensively documents the efforts of those loyal to mass production organizational patterns to resist these changes. In the first half of the twentieth century, American products were relatively free from active competition with foreign made goods. Increasingly those elements of domestic production that require high volume machinery and relatively unskilled workers can be accomplished more cheaply in developing countries. Between 1970 and 1980 alone imports from these developing nations jumped 1000 percent (p. 122).

Japan, West Germany and other industrialized countries have been highly responsive to this economic transition. Lacking an entrenched mass production mentality, they moved quickly to capitalize on what they (and we) can do best—produce those products that require skilled workers. Reich contrasts “flexible system” organizational structures, that can encourage highly integrated responses to new opportunities in such industries as precision castings, speciality steel, luxury autos, sensor devices, lasers, and fine ceramics, with the outdated mass production structures that predominate in our textile, automobile, and steel industries. Flexible system production requires that problem solving responsibility belong to everyone, since the in-

tricity of the production process prevents division of the work force into a small problem solving cadre and a homogenous horde of unskilled workers (pp. 127-36).

Managers and workers resist the adaptation of American firms to a flexible system because they realize that such a change reduces the monetary worth of the experience they have accumulated in the mass production system. Lawyers may be especially interested in Chapter VIII, which contains Reich's description of "paper entrepreneurialism," the most common form of resistance practiced by American managers. Paper entrepreneurialism consists of deploying large numbers of creative accountants and lawyers whose task is to rearrange industrial assets to increase cash flow. Reich deplores the use of so many bright people in what he sees as a futile attempt to stave off adaptation to flexible system production (pp. 141-60). His point is that mergers and imaginative accounting offer only temporary profits because they create no new wealth; after a takeover the consuming public has no more income or output than it had prior to the transaction.

Government's role in slowing adaptation to international competition does not escape Reich's purview. Training programs for the unemployed have overwhelmingly been designed for jobs in the high volume, mass production industries (p. 203). Even if such training were effective, the long run employment prospects for the trainees would be grim. Foreign workers in undeveloped countries will do unskilled labor at a lower cost. Reich counsels redirection of training to jobs that promise ongoing employment in a flexible system of production, for example, optical workers, skilled assemblers, and computer operators.

When the public sector is called on to meet the housing, medical and educational needs of the poor, Reich sees an opportunity to channel social policy toward flexible system production (pp. 240-46). Providing incentives to business to move toward production processes that have growth potential can often take the form of rewarding those firms which recognize that building a cooperative, healthy, and creative labor force is good for business. Moreover, social programs are a divisive factor in our national debates over the governmental budget as long as they are regarded as public charities. Reich argues that business people and politicians should all support increased spending on health care, job training, housing, and nutritional programs for the poor because such expenditures, when made a part of an economic development strategy, benefit us all (p. 219).

Each of the specific policy proposals that constitute Part IV is designed to create an economy in which employees are relatively secure in their jobs and there is very little difference in the status or income of senior managers and junior employees. By investing in workers, employers encourage employees to feel positively toward the firm and consequently to welcome the change required by flexible system production. Reich's emphasis on teamwork and egalitarianism at work as well as in our civic roles stems from his contention that the key determinant of national well-being is a talented, cooperative labor force (pp. 257-66).

II.

One basic observation made by Reich is particularly significant to his argument. Those who cling to the idea that private sector decisions can ever be free from political influence are grasping at a chimera. Thus, the key debate in every society should be the nature of the inescapable interaction between business and government. Reich strangely places the beginning of governmental management of the economy in the World War I era. As Morton Horowitz recently pointed out, the American government has been used by the dominant business interests as a facilitator of economic growth ever since this country was founded.² Horowitz correctly points out what Reich misses in his rush toward national consensus. Our legal system has always been a tool through which *competing* interests could struggle for distributional predominance. Just as the legal structure was shaped by the middle of the nineteenth century to reflect the market oriented values of men of commerce and industry,³ so will there always be attempts by farmers, workers, consumers, and other less powerful groups to shape governmental policy for their benefit.

Reich does a creditable job of demonstrating that government and business inevitably impinge on each other's performance. But he makes the dubious assumption that since the civic culture (Reich's term for the social justice objectives that he attributes to governments) and the market system interact, they have common objectives. To say that business and government share responsibility for health, education, pollution, and transportation problems is hardly proof that these responsibilities are pursued with identical value priorities. The excellent comparative statistics that Reich presents to show the maldistribution of income and the high unemployment

2 M. HOROWITZ, *THE TRANSFORMATION OF AMERICAN LAW* (1977).

3 *Id.* at 253-54.

rates that characterize our economy (pp. 283, 286) should have alerted him to the extent that the market oriented values of individualism, competition, and freedom for the property owner have prevailed over the values of cooperation, sharing, and egalitarianism that Reich associates with governments.

Several other authors provide a more illuminating analysis of the power struggle between these values. Charles Lindblom presents a persuasive case that governmental policy must be generally pleasing to large corporations or risk the veto power these business interests possess.⁴ Milton Friedman eloquently calls for greater governmental adherence to the market values he espouses.⁵ Robert Solo has recently pointed out the negative way in which we envision state action as an "intervention."⁶ Governmental action is interventionist in nature only to the extent that we accept the preeminence of market calculations of resource value. What all these analyses share, and what Reich's does not, is an appreciation for the legitimate conflicts among competing communities and interest groups. Each recognizes that there can be no consensus about economic growth strategies while there are ongoing struggles over the distribution of income and wealth.

How does Reich fail to see the value and distributional conflicts that shape the choice of either markets or government as the stimulus for resolving particular problems? This form of moral blindness is made possible by an argument framed in highly abstract terms. Reich maintains that our economic problems are caused by faulty organization (pp. 40-43). Unlike those analysts who delve into the concrete competing interests that prefer particular organizational modes,⁷ Reich thinks in terms of a conflict between friends and foes of effective organization. Reich's failure to see the ambiguity inherent in defining "effective" enables him to simplify issues. He seems to say that there is no real conflict between selfishness and sharing; sharing benefits us all (p. 280). In some sense he is right: sharing may ennoble the giver while materially benefitting the recipient, and may in the long run benefit the giver by improving society as a whole. However, the political potency of President Reagan and his supporters should be convincing evidence that potential sharers will require

4 C. LINDBLOM, *POLITICS AND MARKETS* (1977).

5 M. FRIEDMAN, *FREE TO CHOOSE* (1980).

6 R. SOLO, *THE POSITIVE STATE* (1982).

7 See J. GALBRAITH, *ECONOMICS AND THE PUBLIC PURPOSE* (1973); A. NOVE, *THE ECONOMICS OF FEASIBLE SOCIALISM* (1983).

more than Reich's hortatory efforts to support the policy proposals he suggests.

Although Reich explicitly dodges ideological considerations, his policy suggestions clearly reflect his allegiance to liberal political values. Each proposal focuses on business implementation of programs designed and evaluated by a liberal government pursuing social justice. The market emphasis on individual struggle is criticized by Reich as out of place in a flexible production system (p. 279). Beneath Reich's feigned neutrality between the business and civic cultures lies a clear preference for the traditional objectives of liberal thought. Nowhere in his analysis of our current economic condition is there any concern expressed about the dangers of overregulation, government deficits, or inflation. These standard conservative themes stem from adherence to markets as a decision making mechanism. Reich not only gives them no place in his analysis, he presents a lucid criticism of their habitual use by conservatives as a basis for ridiculing government expansion (pp. 118-20). The consensus Reich apparently has in mind is one that reduces the role of markets as allocative devices.

The Next American Frontier is noteworthy in that it provides a creative rationale for the type of policies preferred by liberal Democrats. Reich's description of the type of industries that we should encourage is compelling. As a nation we cannot hope to compete effectively in mass production industries because our labor force is more highly skilled and, hence, more highly paid. Where Reich is less convincing is in his description of an *egalitarian* flexible system of production. Arguments about the distributional implications of this suggested change in managerial structure can be expected to be furious.